T.A.S. Graphic Communications, Inc. *and* Local 2-C, Graphic Communications International Union, AFL–CIO. Case 7–CA–34396

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by Local 2-C, Graphic Communications International Union, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on May 10, 1993, against T.A.S. Graphic Communications, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge[1] and complaint,[2] the Respondent failed to file an answer.

On July 13, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On July 14, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 28, 1993, notified the Respondent and its trustee in bankruptcy that unless an answer was received by June 11, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] The charge was served by certified mail, return receipt requested. The charge was returned to the Region marked "unclaimed" with the further handwritten notation, "out of business 3/30" followed by the initials JR. The charge was once again served, both by regular and certified mail. The certified mail was returned without receipt. The regular mail was not returned. It is well established that service is accomplished by deposit in the mail to the Respondent's last known address. *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992). The Respondent may not defeat the purposes of the Act by failure or refusal to accept service of the documents. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

[2] The complaint was served by certified mail on the Respondent and the Respondent's trustee in bankruptcy.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, until March 12, 1993, when it closed its facility, was a corporation with an office and place of business in Detroit, Michigan, and was engaged in the commercial printing business. Since March 22, 1993, the Respondent has been a debtor in bankruptcy filed involuntarily under Chapter 7 of the Bankruptcy Code by creditors seeking liquidation of the Respondent corporation. During the calendar year ending December 31, 1992, the Respondent purchased and received at its Detroit, Michigan facility goods valued in excess of $50,000 directly from points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

All full-time and regular part-time production and maintenance employees including composition, prepress, plate making, sheet fed press, web press and associated pressroom devices, bindery, mailing/shipping, truck drivers employed by the Respondent at its facility located at Detroit, Michigan, but excluding all office clerical employees, managerial, technical and professional employees, and guards and supervisors as defined in the Act constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On July 2, 1992, the Union was certified as the exclusive collective-bargaining representative of the employees in the unit. Since July 2, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

Since on or about October 1992, the Respondent deducted money from the paychecks of certain unit employees which was intended to be used to provide health care insurance benefits pursuant to its self-insured health care plan and the Respondent failed to forward the money to the insurer for the purpose. Since on or about October 1992, the Respondent discontinued payment of health insurance benefits/claims for unit employees under its Employee Benefit Plan. These subjects related to wages, hours, and other terms and conditions of employment of unit employees and are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in these acts and conduct without prior notice to the Union and without having afforded the Union, as the exclusive representative of the unit employees, an opportunity to negotiate and bargain.

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On or about March 12, 1993, the Respondent notified the Union that its facility was closing that day. On the same day, the Union, by letter, requested that the Respondent negotiate the effects of the closing of its facility. The Respondent failed to give timely notice of its decision to close thereby precluding the Union from effectively seeking to bargain about the effects of the decision to close. Since on or about March 12, 1993, the Respondent has failed and refused to bargain collectively with the Union over the effects on unit employees of the closing of the facility.

On or about March 9 and 12, 1993, the Union, by letters, requested that the Respondent furnish it with certain information. On or about March 23, 1993, the Union, by letter, requested that the Respondent furnish it with certain additional information. The information requested is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. Since about March 9, 1993, the Respondent has failed and refused to furnish the Union with the information.

CONCLUSION OF LAW

By deducting health care benefit payments from the paychecks of certain unit employees and failing to forward the money to the insurer, by discontinuing payment of health insurance benefits/claims under its Employee Benefit Plan for unit employees, by failing to give timely notice of its decision to close its facility, by refusing to bargain over the effects on unit employees of the closing of the facility, and by refusing to provide the Union with information necessary for and relevant to the Union's duties as exclusive representative of unit employees, the Respondent has been failing and refusing to bargain collectively and in good faith within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent discontinued payment of health insurance benefits/claims under its Employee Benefit Plan and failed to forward deducted health care benefit payments to the insurer, we shall order the Respondent to make all payments to the insurer which should have been made but for its unlawful conduct and to make unit employees whole by reimbursing them for any expenses they may have incurred as a result of the Respondent's failure to do so, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To remedy the Respondent's failure to bargain with the Union regarding the effects of closing its facility, we shall order the Respondent to bargain with the Union, on request, concerning the effects of that decision. To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, the Respondent shall be ordered to pay its employees backpay at the rate of normal wages when last in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on the effects on unit employees of the closing of its facility; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Respondent's notice of its desire to bargain in good faith; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of these employees exceed the amount the employees would have earned as wages from the date on which the Respondent closed its facility to the time the employee secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at a rate of their normal wages when last in the Respondent's employ. See *Transmarine Corp.*, 170 NLRB 389 (1968). Interest on all sums shall be paid in the manner prescribed in *New Horizons*, supra.

Having found that the Respondent has refused to provide the Union with necessary and relevant information, we shall also order the Respondent to provide the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, T.A.S. Graphic Communications, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union by deducting health care benefit payments from the paychecks of certain unit employees and failing to forward the money to the insurer, by discontinuing payment of health insurance benefits/claims under its Employee Benefit Plan for unit employees, by failing to give

timely notice of its decision to close its facility, by refusing to bargain over the effects on unit employees of the closing of the facility, and by refusing to provide the Union with information necessary for and relevant to the Union's duties as exclusive representative of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of the closing of the facility, reduce to writing any agreement reached as a result of such bargaining, and pay limited backpay, with interest, in the manner set forth in the remedy section of this decision.

(b) Make the payments which were deducted from employees' paychecks for health insurance premiums but were not forwarded to the insurer since on or about October 1992, and make whole unit employees for any expenses they may have incurred as a result of the failure to make such payments, with interest, as set forth in the remedy section of this decision.

(c) Furnish the Union with the requested information as set forth in its letters of March 9, 12, and 23, 1993.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 17, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 2-C, Graphic Communications International Union, AFL–CIO, the certified exclusive representative of our employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees including composition, pre-press, plate making, sheet fed press, web press and associated pressroom devices, bindery, mailing/shipping, truck drivers employed by us at our facility located at Detroit, Michigan, but excluding all office clerical employees, managerial, technical and professional employees and guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain with the Union by deducting health care benefit payments from the paychecks of certain unit employees and failing to forward the money to the insurer, by discontinuing payment of health insurance benefits/claims under our Employee Benefit Plan for unit employees, by failing to give timely notice of our decision to close our facility, by

refusing to bargain over the effects on unit employees of the closing of the facility, and by refusing to provide the Union with information necessary for and relevant to the Union's duties as exclusive representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole, with interest, for failure to forward deducted health insurance benefit payments to the insurer and for discontinuing payment of health insurance benefits/claims under our Employee Benefit Plan, as set forth in the remedy section of this decision.

WE WILL, on request, bargain in good faith with the Union over the effects on unit employees of our decision to close our facility and will put in writing any agreement reached as a result of such bargaining, and WE WILL pay unit employees limited backpay as required in the remedy section of this decision, with interest.

WE WILL furnish the Union with the information it requested on March 9, 12, and 23, 1993.

T.A.S. GRAPHIC COMMUNICATIONS, INC.